

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RICHARD J. THOMAS,)	
)	
Petitioner,)	
)	Civil No. 03-MC-31-B-W
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**ORDER AFFIRMING RECOMMENDED DECISION ON
MOTIONS TO QUASH SUMMONS**

On September 3, 2002, Richard J. Thomas (Thomas) moved this Court to quash a series of Internal Revenue Service (IRS) summonses. On April 14, 2003, this Court affirmed the Recommended Decision of Magistrate Judge Kravchuk and ordered partial enforcement of the summonses. *Thomas v. United States*, 254 F.Supp.2d 174 (D. Me. 2003). Dr. Thomas appealed, and on March 16, 2004, the First Circuit Court of Appeals affirmed the decision of the district court and imposed sanctions for his frivolous appeal. *Thomas v. United States*, 2004 WL 549793 (1st Cir. 2004).

This is a companion case. Following this Court's Order of April 14, 2003, the IRS served eight summonses upon third parties for the production of documents. Dr. Thomas responded by filing with this Court a Petition to Quash those summonses. The IRS later moved to dismiss the Motion to Quash as it related to the IRS summons to the Church of Jesus Christ of Latter Day Saints on the ground that the Church was not a "third party recordkeeper" pursuant to 26 U.S.C. § 7603 and § 7609(c)(2)(E) and Dr. Thomas lacked standing to pursue a motion to quash. On September 30, 2003, Judge

Kravchuk issued a Recommended Decision that this Court grant the IRS's Motion to Dismiss and deny Dr. Thomas's Motions to Quash the remaining seven summonses.

Dr. Thomas's grounds for petitioning to quash the summonses are again frivolous. First, he attempts to raise the issues that were thoroughly discussed and resolved against him in the earlier proceeding. In her September 30, 2003, Recommended Decision, Judge Kravchuk explained that to the extent Dr. Thomas was attempting to resurrect the same arguments in this proceeding as were rejected in the earlier proceeding, her recommendations were unchanged. This Court's position as well remains unchanged.

Dr. Thomas next contends his appeal of this Court's April 14, 2003 Order "estopped" the IRS "from opening and using any information provided by those parties originally summonsed or provided by other parties based on ill-gotten private information, papers and records, until such matter is settled." *Pet.'s Amended Pet. To Quash* at 4. Dr. Thomas is incorrect about the enforceability of the IRS summons pending appeal: If he wished to prevent the enforcement of the IRS summonses pending appeal, he was required to file a motion to stay the judgment under Rule 62. He failed to do so and the summonses remained enforceable pending appeal. *United States v. Puckett*, 573 F. Supp. 713, 716 (E.D. Tenn. 1981); *United States v. Manchel, Lundy and Lessin*, 477 F. Supp. 326, 334 (E.D. Pa. 1979); 11 Wright & Miller, Fed. Practice & Procedure: Civil 2d ed. § 2904. Dr. Thomas's claims have been rendered moot in any event by the recent denial of his appeal by the First Circuit. *Thomas*, 2004 WL 549793, *2.

The United States Magistrate Judge filed her Recommended Decision with the Court on September 30, 2003. The Petitioner filed his objection to Recommended Decision on October 7, 2003; the Respondent filed its objections to the Petitioner's

Objection on October 21, 2003; and, the Petitioner filed a Reply to the Response to Objection on November 12, 2003. This Court has reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record and has made a *de novo* determination of all matters adjudicated by the Magistrate Judge's Recommended Decision. This Court concurs with the recommendations of the United States Magistrate Judge for the reasons set forth in her Recommended Decision and for the reasons further set forth herein and this Court determines no further proceeding is necessary.

1. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge is hereby AFFIRMED.
2. It is further ORDERED that the Respondent's Motion to Dismiss (Docket No. 5) is hereby GRANTED.
3. It is further ORDERED that the Petitioner's Motions to Quash (Docket Nos. 1, 3 and 4) are hereby DENIED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 18th day of June, 2004.

Plaintiff

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